

The 25th February, 1986

No. 9/6/86-6 Lab./1168.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of Haryana Roadways, Kaithal (Haryana).

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA.

Reference No. 172 of 1984

(Old No. 395 of 1983)

SHRI MAHESH CHANDER, WORKMAN AND
THE MANAGEMENT OF MESSRS HARYANA
ROADWAYS, KAITHAL (HARYANA)

Present:

Shri U. Kant, for workman;

Shri A. R. Goyal, for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of its powers conferred,—vide clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, has referred dispute between Shri Mahesh Chander, workman and the management of the General Manager, Haryana Roadways, Kaithal to Labour Court, Faridabad. The terms of the reference are as under:

Whether the termination of services of Shri Mahesh Chander, workman is justified and in order? If not, to what relief is he entitled?

In April, 1984 Labour Court was constituted at Ambala thereafter; this reference was received by transfer.

Shri Mahesh Chander through his demand notice has challenged the order of termination of his service passed by the General Manager, Haryana Roadways, Kaithal and also his appeal dismissed by the State Transport Commissioner, Haryana, alleging that the inspector made false report against him. During the inquiry proceedings he was not given a proper opportunity to cross-examine the witnesses. He also alleged that he was also deprived of from filing reply to show-cause notice and was also not allowed to defence evidence. So the enquiry proceedings have been vitiated and the termination

order of his services on the basis of inquiry report was passed by the General Manager, Haryana Roadways, Kaithal without hearing him in person. So he prayed that the termination order be set-aside and, he be reinstated with continuity in service and with full back wages.

Management contested the reference and contended that workman was appointed as Conductor in Haryana Roadways on 31st March, 1975. The workman was found committing embezzlement of Rs. 12.80. So his services were terminated after providing full opportunity to cross-examine the witnesses to lead defence, evidence and opportunity of being personally heard.

Workman filed rejoinder through which he controverted the allegations of the management.

On the pleadings of the parties the following issues were framed :—
ISSUES:

(1) Whether termination order dated 9th April, 1982 regarding the services of workman Mahesh Chander is justified and in order? If not, its effect? OPM

(2) Relief.

I have heard both the A.R.'s of the parties and have perused the evidence available on the file after affecting thoughtful consideration to the whole matter. My issuewise findings are as under:

ISSUE NO. 1:

In support of this issue Shri Sikender Lal, H.R., Kaithal appeared. He made statement on the basis of the enquiry file that before passing termination order of the workman charge-sheet Ex. M-1 along with details of allegations Ex. M-2 were given to him. Reply of workman is Ex. M-3.

Vide Ex. M-4 Shri Piare Lal, was appointed an Inquiry Officer. Enquiry proceedings are Ex. M-6/1-2-3. Vide mark M-1 workman refused to lead defence evidence. Ex. M-8 show-cause notice was served upon the workman. Workman did not file any reply. Vide Ex. M-9, Ex. M-10 workman was afforded and opportunity of being personally heard by the General Manager, H. R. Kaithal. But workman did not appear before the General Manager which was dismissed,—vide order Ex. M-13. In cross-examination this witness admitted that the workman demanded time for filing reply to show-cause notice which was not extended. Secondly, the workman also requested the G. M. that due to illness he is

unable to appear before him. For personal hearing no further time was granted.

Shri P. L. Sharma, Traffic Manager stated that documents Ex. M-4 and M-5 enquiry proceedings Ex. M-6 and his report Ex. M-7 were prepared by him with the help of some clerks.

He also admitted that he did not afford any opportunity to workman lead defence evidence because he had made confession statement of his guilt before the Inspector V. K. Sharma, who apprehended him. He also stated that Shri V. K. Sharma, Inspector stated that at the time of checking the bus he failed to check the way bill and cash both.

MW-3 is Shri V. K. Sharma, he supported his report Ex. M-5 he stated that writing mark M-20 is in his own hand which was signed by Conductor he made statement before the enquiry Officer. In cross-examination he stated that he did not make any note on mark-II that the Conductor has refused to give statement in writing regarding the embezzlement of Rs. 12.80.

Mahesh Chander appeared as AW-I. He controverted by the whole evidence produced by the management.

In view of the above evidence I am of the considered opinion that first of all the Inquiry Officer did not extend time and did not afford sufficient time to workman to file a reply of show-cause notice.

Secondly, as per admission of Shri P. L. Sharma, Inquiry Officer that he relied upon confession statement present on Mark-II written by Shri V. K. Sharma, and due to this fact he admitted that he did not afford any opportunity to workman to lead defence evidence. It also shows that signature of Shri Mahesh Chander, workman were taken on Ex. M-14 on a blank paper and later on Ex. M-14 was got written. This statement of Inquiry Officer also afford strength to the statement of workman that his signatures were obtained on blank papers.

No doubt letters were written by General Manager, Haryana Roadways, Kaithal to workman to appear before him for personal hearing but workman failed to appear before the General Manager for personal hearing due to illness and thereafter no further opportunity was given to him. In other words the General Manager without hearing the workman passed his termination order.

It was stated by Shri V. K. Sharma that Mark-II confession statement was written by

him. It bears signature of Shri Mahesh Chander workman. It is not accompanied with a note that workman refused to give in writing that he had embezzled Rs. 12.80.

Even if the workman would have given in writing his confession statement to Shri V. K. Sharma, prosecutor in this case in those circumstances such a confession statement would have not been admissible under section 24 of Indian Evidence Act, just like a confession statement before a police officer is not admissible in evidence.

Shri V. K. Sharma, MW-3 in his cross-examination frankly admitted that he did not check way bill and cash of the Conductor at the time of checking the bus.

Report of Shri V. K. Sharma Ex. M-15 clearly reads that the police officials were being vouchers of six persons with them four persons were in police uniform and two Civilian were travelling with them which shows either the police officials themselves were taking two civilians with them in bus without tickets on the basis of police voucher or a conductor mistook to those civilians that they were attached with the four police constables.

The Inspector Shri V. K. Sharma did not record statement of those passengers whether they were attached with police official or they were travelling without tickets or they had paid fare to conductor and were not issued tickets. So whole of this matter is vague and nothing is clear. If the Inquiry Officer would have afforded an opportunity to the workman to lead defence evidence. In those circumstances the workman must have stated the true facts but he was not afforded an opportunity to lead defence.

Secondly, General Manager passed termination order without affording him an opportunity of being heard in person.

So in view of my above discussions I am of the considered view that workman was deprived of filing a reply of show-cause notice, to lead defence evidence and from personal hearing. Moreover, Inquiry Officer wrongly acted on Mark-II on so called confession. The prosecuting Inspector Shri V. K. Sharma did not make a note on Mark-II that workman had refused to make statement regarding a fraud of Rs. 12.80 nP nor the Inspector checked the way bill and cash of the Conductor nor he recorded statement of those two alleged passengers who were travelling without tickets. Whether they were attached with those four constables who

were having lorry voucher of six persons with them in those circumstances the enquiry proceedings have been totally vitiated. The termination order regarding the service of the workman is illegal. Hence it is set-aside so this issue is decided in favour of workman against the management.

ISSUE NO. 2:

For the foregoing reasons on the basis of findings on Issue No. 1, I order reinstatement of workman Mahesh Chander with continuity in service and with full back wages.

I pass an award regarding the controversy between the parties accordingly.

Dated the 8th January, 1986.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 57, dated Ambala City, the 8th January, 1986.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

KULWANT SINGH,
Secretary to Government, Haryana,
Labour and Employment Department.